R.D. # 0007-04
Vauxhall, New Jersey

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

SOUTH MOUNTAIN HEALTHCARE AND REHABILITATION CENTER[1] **Employer**	
and	**CASE 22-RC-12461**
DISTRICT 6, INTERNATIONAL UNION OF INDUSTRIAL, SERVICE, TRANSPORT, AND HEALTH EMPLOYEES[2] **Petitioner**	

DECISION AND ORDER

I. INTRODUCTION

The Petitioner seeks to represent a unit of approximately 110 employees consisting of all full-time and regular part-time nurses aides, dietary staff, housekeeping and laundry employees, employed by the Employer at its Vauxhall, New Jersey facility, but excluding all office clerical employees, skilled maintenance employees, licensed practical nurses, registered nurses, professional employees, watchmen, guards and supervisors as defined in the Act. The Employer and PACE, Local 1-300, AFL-CIO, CLC (herein the Intervenor) seek to dismiss the petition on

[1] The name of the Employer appears as amended at the hearing.
[2] The name of the Petitioner appears as amended at the hearing.

the basis of an existing collective bargaining agreement between them which they assert is a bar.

For the reasons set forth below, I find that a collective bargaining agreement exists between the Employer and the Intervenor which bars the processing of the petition filed herein and I shall dismiss the petition on that basis.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[3] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.[4]

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[5]

3. The labor organizations involved claim to represent certain employees of the

---

[3] The Petitioner's facsimile transmission of its brief dated April 13, 2004, is rejected as it fails to comport with Section 102.114(g) of the Board's Rules and Regulations, that provides, *inter alia*, that briefs are unacceptable if submitted by facsimile transmission. Furthermore, I note that briefs were due in the Regional Office by the close of business April 12, 2004. Briefs filed by the Employer and the Intervenor were considered.

[4] The Petitioner's request for special permission to appeal the Hearing Officer's granting the Intervenor's motion to intervene based on the asserted inadequacy of the showing of interest is denied. In this regard, the sufficiency of the Intervenor's showing of interest is an administrative matter not subject to litigation. *O.D. Jennings and Company*, 68 NLRB 516 (1946).

[5] The Employer is a New Jersey corporation engaged in the operation of a nursing home providing health care and related services at its Vauxhall, New Jersey facility, the only facility involved herein.

Employer.[6]

4. No question affecting commerce exists concerning the representation of certain employees of Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

II. FACTS

The Employer and the Intervenor assert there is a collective bargaining agreement in effect between them, thus barring a question concerning representation and requiring a dismissal of the petition. The record disclosed that the Employer and Amalgamated Local 747 Health Care Employees Union (herein Local 747) were parties to a collective bargaining agreement that commenced July 1, 1997 and expired June 30, 2001. The record further revealed that on May 25, 2000, the Employer and Local 747 executed a Memorandum of Agreement agreeing to the terms of a new collective bargaining agreement covering the period of July 1, 2000 through June 30, 2004.

It is undisputed that on January 14, 2002, Local 747, along with other affiliated locals, executed an Affiliation Agreement to become merged with and known as PACE, Local 1-300, AFL-CIO, CLC, the Intervenor. On that same day Clarice St. Luce, the Intervenor's President and Business Manger, informed the Employer of the merger. It is further undisputed that the Intervenor became the successor labor organization to Local 747 and that the Employer recognized the

[6] The Intervenor was permitted to intervene in this proceeding based on it collective bargaining relationship with the Employer. The parties stipulated and, I find, that the Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

Intervenor and continued to apply and administer the terms and conditions of the July 1, 2000 through June 30, 2004 collective bargaining agreement.

The record reveals that at some point prior to February 24, 2004, the Employer and the Intervenor entered into negotiations for a successor collective bargaining agreement. It is undisputed that the Employer and the Intervenor reached agreement on a new collective bargaining agreement whose terms were memorialized in a Memorandum of Agreement executed by the Intervenor and the Employer on March 5 and March 9, 2004, respectively. This Memorandum of Agreement was reduced to writing and signed by all parties and is effective for the term beginning March 5, 2004 for a period of four years.[7] It is clearly identifiable as a controlling document, which contains a provision that states: "[a]ll terms of the agreement remain the same, except as modified below for a successor agreement." This agreement clearly contains substantial terms and conditions of employment including, *inter alia*, wages, hours, health and pension provisions.

The Petitioner filed its petition here on March 18, 2004. The Petitioner, contrary to the Employer and the Intervenor, asserts that the Employer and the Intervenor entered into a new collective bargaining agreement covering the period of January 14, 2002 to June 30, 2004, effectively creating an 18-month contract that contains a window-period from 120-to-90 days prior to its expiration, thus making its petition timely filed. Petitioner asserts that the Employer and the Intervenor did this

[7] In this regard, a contract having a fixed term of more than three years operates as a bar for as much of its term as does not exceed three years. *General Cable Corp.*, 139 NLRB 1123 (1962); *General Dynamics Corp.*, 175 NLRB 1035 (1969).

following the merger of the various unions into the successor labor organization known here as the Intervenor on or about January 14, 2002. In support of its assertion, the Petitioner entered into evidence what appears to be an unsigned collective bargaining agreement by and between the Employer and the Intervenor.[8] This document contains a cover page that identifies it as a collective bargaining agreement between the Employer and the Intervenor with effective dates listed at the bottom of the cover page that read January 14, 2002-June 30, 2004. Further, the next page of the purported collective bargaining agreement includes an "Agreement" clause that references a local other than the Intervenor.[9] Even though the document was admitted into evidence, I note that it is unsigned and unauthenticated. Further, the record is silent as to how the Petitioner came into possession of this document. The Employer and the Intervenor deny such an agreement.

III. ANALYSIS

The Board's contract bar rules are clear. To serve as a bar to an election, a contract must meet certain basic requirements; these requirements are set out in the Board's decision in *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). In this regard, a contract must be reduced to writing and executed by the parties; it must also be clearly identifiable as a controlling document and contain substantial terms and conditions of employment. The Board in *Appalachian Shale Products Co.*, above, recognized that contracts may on occasion be contained in informal documents and are sometimes arrived at by an exchange of signed documents. See also *Diversified*

[8] Exhibit P-1, in evidence.
[9] Namely, United Service Employees Union, Local 518.

Services, Inc., 225 NLRB 1092 (1976); *United Telephone Co.*, 179 NLRB 732 (1969). Regardless, all the contracting parties must sign the contract before the rival petition is filed. *DePaul Adult Care Communities*, 325 NLRB 681 (1998).

The primary objective of the Board's contract bar policy is to achieve a reasonable balance between the often-conflicting goals of industrial stability, on the one hand, and freedom of employees' choice, on the other. The policy is intended to afford the contracting parties and the employees a period of stability in their relationship, without interruption, and at the same time provide employees the opportunity, at reasonable times, to change or eliminate their bargaining representative if they wish. *Hexton Furniture Co.*, 111 NLRB 342 (1955); and *Appalachian Shale Products Co.*, above at 1163.

The Memorandum of Agreement agreed to by the Employer and the Intervenor was executed during the fourth year of the previous collective bargaining agreement but prior to the March 18, 2004 filing of Petitioner's petition. I find, as described above, that this Memorandum of Agreement was reduced to writing and signed by all parties and is effective for the term beginning March 5, 2004 for a period of four years. It is clearly identifiable as a controlling document, which contains a provision that states: "[a]ll terms of the agreement remain the same, except as modified below for a successor agreement." This agreement clearly contains substantial terms and conditions of employment including wages, hours, health and pension provisions. It clearly satisfies the Board's contract-bar principles and, as such, I find that it is a bar to the processing of the instant petition. *Appalachian Shale Products Co.*, above. I further find that the Petitioner's assertion of the existence of

an 18 month collective bargaining agreement between the Employer and the Intervenor, for the period January 14, 2002-June 30, 2004, is not supported by record evidence. In this regard, this purported agreement was neither authenticated or signed. Thus, I cannot find that this purported agreement was operative and that the petition here was timely filed *vis a vis* that agreement. Based upon the above and the record as a whole, I will issue the following order:

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

IV. RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. The Board in Washington must receive this request by **May 6, 2004**.

Signed at Newark, New Jersey this 22nd day of April 2004.

/s/ Gary T. Kendellen

_____

Gary T. Kendellen, Regional Director
NLRB, Region 22
20 Washington Place, 5th Floor
Newark, New Jersey 07102